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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,959	12/14/2000	Brian Feinberg	SEDN/309	1713
56015 7590 04/24/2007 PATTERSON & SHERIDAN, LLP/ SEDNA PATENT SERVICES, LLC 595 SHREWSBURY AVENUE SUITE 100 SHREWSBURY, NJ 07702			EXAMINER CHOWDHURY, SUMAIYA A	
			ART UNIT 2623	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/24/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/738,959

Applicant(s)

FEINBERG ET AL.

Examiner

Sumaiya A. Chowdhury

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/21/06 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.
3. Applicant's arguments filed 12/21/06 have been fully considered but they are not persuasive.

(a) Applicant argues "...there is no motivation to combine Blumenau or Stetten with the remote access device of Ellis because each reference addresses problems that are quite different from each other" on page 7, 2<sup>nd</sup> paragraph of the Remarks.

In light of the amended claim, the Examiner has withdrew the Ellis reference.

(b) Applicant argues in reference to the Stetten reference "Since the control signals are used to provide (or deny) content access at a user or subscriber equipment, there is no

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reason why Stetten's invention would require any modification such as using a terminal remote to the subscriber equipment" on page 7, 5<sup>th</sup> paragraph of the Remarks.

Applicant is arguing on a piecemeal basis. Stetten was only brought in to teach sending a control signal separately from the TV signal.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 7-17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blumenau (6108637) in view of Stetten (3746780).

As for claim 1, Blumenau teaches a method for monitoring operation of a television distribution system comprising provider equipment and subscriber equipment, said method comprising:

receiving, at a control unit (501 – Fig. 5B), a directive (monitoring instructions) for a system operator (301 – Fig. 5B ) to use a particular terminal (501 – Fig. 5B) remote from the subscriber equipment (302 – Fig. 5B) to monitor a particular channel within a plurality of channels transmitted from a head-end (content provider site 301 – Fig. 5B) of the provider equipment to the subscriber equipment through a distribution node (303 – Fig. 5B) of the television distribution system, wherein the directive is received at the

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control unit through a communication means of the television distribution system (col. 22, lines 1-60);

sending a command indicative of the particular channel to the particular terminal to be monitored – (The monitoring instructions instruct the display site (terminal) to monitor a particular channel – col. 10, lines 55-65. The audiovisual media such as television and radio is discussed as a related art that may need monitoring – col. 1, lines 40-43);

receiving content being transmitted on the particular channel at the particular terminal through the distribution node of the television distribution system – (The transmission of the monitoring information collected from the content display site 302 to the content provider site 501 is transmitted back through network 303 – col. 22, lines 48-60);

capturing the received content and reporting the captured content – (Review of the monitoring information produced by the monitoring instructions after the information is received at the content provider site 301 can enable conclusions regarding the observer's observation of the content to be deduced – col. 11, lines 7-10).

However, Blumenau fails to explicitly teach a television distribution system although he does mention a television environment in col. 1, lines 35-47. Blumenau additionally fails to teach that the directive is received at the control unit through a communications means not including the distribution node of the television distribution system.

In an analogous art, Stetten teaches a television distribution system (col. 2, lines 44-50) sends a control signal separately from the TV signal over telephone lines to the user (col. 11, lines 21-25).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Blumenau's invention to include a television distribution system sends a control signal separately from the TV signal over telephone lines to the user, as taught by Stetten, for the advantage of providing a versatile technique for sending a command to the television receiver and at the same time avoiding manipulating the video signal.

Blumenau and Stetten disclose the claimed limitations of claim 2. In particular, Blumenau teaches the reported contents are used to verify delivery of contents from the television distribution system – (Observations of the received monitoring system provide verification of the content delivery at the display site – col. 11, lines 7-10).

Blumenau and Stetten disclose the claimed limitations of claim 3. In particular, Blumenau teaches the reported contents are used to verify operation of a user interface at the particular terminal – (The monitoring method takes into account the monitoring of a “user interface mechanism” – col. 19, lines 50-52).

Blumenau and Stetten disclose the claimed limitations of claim 7. In particular, Blumenau teaches wherein the directive is received as part of a regular monitoring schedule – (The monitoring instructions are transferred to the content display site 302 together with the content – col. 11, lines 57-59. A regular schedule of monitoring is accomplished upon regular transmission of content (and therefore, concurrent monitoring instructions) to the content display site 302. A subscriber using the system would not be away of the “regular monitoring schedule”, but as long as s/he was using the display site for retrieval of content, the monitoring instructions would be regularly downloaded and acted upon).

Claim 8 contains the limitations of claim 1 and is analyzed as previously discussed with respect to that claim.

As for claim 9, Blumenau and Stetten fail to explicitly teach the particular terminal is selected from among a plurality of terminals.

The Examiner takes Official Notice that it is well known in the art to select a monitoring terminal from a plurality of terminals. Usually, the terminal closest in location the subscriber's home is selected. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Blumenau and Stetten's invention to include the above mentioned limitation for the advantage of using a terminal within shortest distance to the subscriber's house.

Claim 10 contains the limitations of claim 1 and is analyzed as previously discussed with respect to that claim.

Blumenau and Stetten disclose the claimed limitations of claim 11. In particular, Blumenau teaches a monitor and control unit operatively coupled to the control unit and configured to provide the directive to monitor the particular channel at the selected terminal (Review of the monitoring information produced by the monitoring instructions after the information is received at the content provider site as discussed in col. 20, lines 1-4. As illustrated in Fig. 5A-5C, the content and monitoring instructions can be transferred to the content display site 302 from the application manager site 501 in response to a request received from the content provider site 301 upon receipt of the request from the content display site 302 [col. 22, lines 11-16]).

Blumenau and Stetten disclose the claimed limitations of claim 12. In particular, Blumenau teaches the monitor and control unit is further configured to provide a set of directives to test user interaction at the selected terminal (The application manager site 501 (previously discussed), sends monitoring instructions for monitoring use of a "user interface mechanism", and therefore, user interaction with the user interface mechanism (col. 19, lines 50-52). For example, column 17, line 59 begins a discussion of how a user interface mechanism is used to monitor the audio content of received content.).



Blumenau and Stetten disclose the claimed limitations of claim 13. In particular, Blumenau teaches the monitor and control unit is further configured to provide a set of directives to verify proper delivery of contents on a plurality of channels to a plurality of terminals (The application manager site 501 or content provider site 301 provide monitoring instructions to the display site 302. The monitoring instructions meet the claimed "set of directives" and the observations of the received monitoring information provide verification of the content delivery at the display site (col. 11, lines 7-10). There are multiple display sites on the network, as discussed in column 10, lines 15-39.).

Blumenau and Stetten disclose the claimed limitations of claim 14. In particular, Blumenau teaches the command directs the selected terminal to tune to the particular channel (The content display site 302 can communicate to a communication port that is different than the port from which the content and the monitoring instructions were transmitted to it col. 20, lines 23-26. Also note that a proxy server can be used to mediate communication between the client computers and other sites on the network (such as the content provider site). The proxy server may not allow communication over a channel specially designated for transmitting monitoring data (col. 20, lines 50-56), this inherently teaches a channel that is used for transmitting monitoring information that must be tuned to in order to transmit the monitoring information to the provider 301, therefore meeting the claim.).

Blumenau and Stetten disclose the claimed limitations of claim 15. In particular, Blumenau teaches a remote control unit configured to receive the command from the control system and direct the selected terminal to tune to the particular channel (The review of the monitoring information produced by the monitoring instructions after the information is received at the content provider site 301 (or other site operatively coupled to the display site and content provider site, as discussed in column 20, lines 1-4). Furthermore, as is illustrated in Figures 5A-5C, the content and monitoring instructions can be transferred to the content display site 302 from the application manager site 501 in response to a request received from the content provider site 301 upon receipt of the request from the content display site 302 (col. 22, lines 11-16). Also note that a proxy server can be used to mediate communication between the client computers and other sites on the network (such as the content provider site). The proxy server may not allow communication over a channel specially designated for transmitting monitoring data [col. 20, lines 50-56], this inherently teaches a channel that is used for transmitting monitoring information that must be tuned to in order to transmit the monitoring information to the provider 301.).

As for claim 16, Blumenau and Stetten fail to explicitly teach including a plurality of terminals of a plurality of terminal models.

The Examiner takes Official Notice that it is well known in the art to have a plurality of terminals of a plurality of terminal models. This is usually the case when terminals are added to a set of already existing terminals. Since the new terminals are

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new, they tend to be new models, yet remain compatible with the existing network. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Blumenau and Stetten's invention to include the above mentioned limitation for the advantage of upgrading an existing network of terminals.

Blumenau and Stetten disclose the claimed limitations of claim 17. In particular, Blumenau teaches the control system includes a media capture unit configured to capture the contents received from the selected terminal (The review of the monitoring information produced by the monitoring instructions after the information is received at the content provider site 301(or other site, such as application manager site 501, as discussed in column 20, lines 1-4), which enable conclusions regarding the observer's observation of the content to be deduced (col. 11, lines 7-10). The reception of the monitoring information inherently teaches some sort of "capture" unit for capturing the content.).

Claim 20 contains the limitations of claims 1 and 9 and is analyzed as previously discussed with respect to that claim.

3. Claims 4-5 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blumenau and Stetten as applied to claims 1 or 17 above, and further in view of Sitnik (US 2002/0010935).

As for claims 4 and 18, Blumenau and Stetten fail to teach wherein the received contents are captured as one or more video frames. The Blumenau reference does teach sending monitoring information back to the provider site 302, however, does not expressly say that the monitoring information can be "one or more video frames".

Sitnik teaches an in-house (or possibly, out of house) TV-to-TV Channel Peeking system that allows a user to query a W and obtain a content sample that may include single or multiple frames of currently viewed content [paragraph 0016]). The Blumenau reference points out that obtaining other types of monitoring information is contemplated by his invention [col. 13, lines 29-30]) and that the network of his invention can include a private computer network such as an intranet that can transfer video and/or audio content (HAVi network) (col. 11, lines 16-22). The network of Sitnik fits this description and could be used as a way of implementing video monitoring in the Blumenau reference. As the Sitnik reference states, "TV networks, advertisers, etc. may gain additional valuable data from the apparatus operating in accordance with the present invention" (paragraph 0024). In other words, TV network would benefit from being able to query TV's on the network to get a frame or multiple frames of currently viewed content.

It would have been obvious to one of ordinary skill in the art at the time of the invention to allow the system of Blumenau and Stetten to receive one or more video frames as content, in order to "gain additional valuable data" about the operation of the apparatus through querying and monitoring.

As for claims 5 and 19, Blumenau and Stetten fail to teach wherein the received contents are captured as a video sequence. The Blumenau reference does teach sending monitoring information back to the provider site 302, however, does not expressly say that the monitoring information can be "a video sequence".

Sitnik teaches an in-house (or possibly, out of house) TV-to-TV Channel Peeking system that allows a user to query a TV and obtain a content sample that may include single or multiple frames of currently viewed content (multiple consecutive frames representing a video sequence) [paragraph 0016]. The Blumenau reference points out that obtaining other types of monitoring information is contemplated by his invention (col. 13, lines 29-30) and that the network of his invention can include a private computer network such as an intranet that can transfer video and/or audio content (HAVi network) [col. 11, lines 16-22]. The network of Sitnik fits this description and could be used as a way of implementing video monitoring in the Blumenau reference. Also, the Sitnik reference states, "TV networks, advertisers, etc. may gain additional valuable data from the apparatus operating in accordance with the present invention" (paragraph 0024). In other words, TV network would benefit from being able to query TV's on the network to get a video sequence of currently viewed content.

It would have been obvious to one of ordinary skill in the art at the time of the invention to allow the system of Blumenau and Stetten, to receive a video sequence as content, in order to "gain additional valuable data" about the operation of the apparatus through querying and monitoring.

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blumenau in view of Stetten as applied to claim 1 above, and further in view of Simsic (6269484).

As for claim 6, Blumenau and Stetten fail to disclose wherein the captured contents are reported as a bitmap.

In an analogous art, Simsic teaches wherein the content transmitted is in bitmap format – col. 4, lines 8-13.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Blumenau and Stetten's invention to include wherein the content transmitted is in "bitmap" format instead of the "one or more frames", as taught by Simsic, in order to gain additional valuable data about the operation of the apparatus through querying and monitoring.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sumaiya A. Chowdhury whose telephone number is (571) 272-8567. The examiner can normally be reached on Mon-Fri, 9-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SAC

  
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